IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.7346 OF 2006

Dilnawaz P. Dubash .... Petitioner
Vs.
Forbes Gokak Ltd. & Ors. .... Respondents

Shri Rahul Nerlekar for the Petitioner.

Sarvasri Lancy D'Souza with V.M. Parkar for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 06, 2006

P.C:

1. Heard. The petitioner challenges the Judgment and Order dated 11-7-2006 passed by the Industrial Court in Complaint (ULP) No.858 of 2002 of the petitioner. By the impugned Order, the said complaint has been dismissed. The complaint was filed under Items 3 and 10 of Schedule IV of the MRTU & PULP Act, 1971 alleging that the transfer of the petitioner from the Fort office to Chandivali office was mala fide. The Industrial Court has rejected the said contention of the petitioner. Hence the present petition.

2. While assailing the impugned Judgment, the learned Advocate appearing for the petitioner submitted that the Industrial Court erred in dismissing the complaint without considering the evidence led by the petitioner

and without discussing the matter on merits of the case of the petitioner. He further submitted that the respondents had not led any evidence and the Industrial Court failed to take note of the same. His further contention is that the impugned Order is cryptic and therefore the same needs to be set aside. He also further submitted that after the transfer on the ground of late reporting to the duty at the transferred place, the petitioner was subjected to disciplinary proceedings and she has been dismissed from the services, in respect of which the petitioner intend to take out separate proceedings challenging the order of dismissal.

3. Perusal of the impugned order discloses that the Industrial Court has held that the petitioner has not established the contention that the transfer was mala fide and further that apart from mere contention of the petitioner in that regard, there is neither direct nor circumstantial evidence placed on record. It has also been observed by the Industrial Court that the petitioner herself had admitted that she was asked to work in place of Mrs. N. Parmar who was transferred to the office of the Deputy Chairman and M.D. and that clearly discloses that the transfer of the concerned employee was to meet the administrative exigencies at Chandivali, that is to fill-up the vacancy that had occurred and therefore the petitioner was transferred to

Chandivali. As regards these findings arrived at by the Industrial Court, nothing is brought to my notice from the evidence which could disclose that the said findings can either be said to be contrary to the materials on record or otherwise perverse. As rightly observed by the Industrial Court in the impugned judgment the transfer is an incidence of service and it forms part of service conditions of the petitioner. Apart from mere allegation that since the petitioner was involved in Union activities that the petitioner was sought to be transferred to Chandivali, though the entire evidence was read over, nothing could be pointed out which could disclose the action of transfer to have been tainted with mala fide on the part of the management. Even the allegation about involvement of the petitioner in the Union activities that has led to her transfer could not be established, apart from the mere allegation in that regard. Being so, the contention that the impugned Judgment is without considering the evidence on record or without considering the merits of the case of the petitioner and that it is a cryptic one cannot be accepted. Merely because there is no elaborate discussion, that by itself cannot lead to the conclusion that the Judgment is cryptic one. What is important to be seen is whether the Court below has applied its mind to the matter in issue and has taken note of the relevant factors which are necessary to decide such

issue and if the Judgment discloses application of mind and taking note of all the relevant factors while deciding the case, it would not be the quantity but the quality of the Judgment which would be the deciding factor. Besides, it is also necessary to consider the nature of the point involved in the matter. Since it related to the transfer of the employee from one place to another and, that too, within a distance of 25 kms. from the earlier posting, it can hardly be said that there has been harassment to the employee on that count. Once it is well-settled that the transfer is an incidence of service, unless a very good case is made out in support of the contention about mala fide action on the part of the management in transfer of the employee, question of interference by the Court in transfer order does not arise at all.

4. For the reasons stated above, therefore, no fault can be found with the impugned order nor it discloses any jurisdictional error warranting interference in writ jurisdiction under Article 227 of the Constitution of India. Hence the petition fails and is rejected.

(R.M.S. Khandeparkar, J.)

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